

SPECIAL EDUCATION AND CHARTER SCHOOLS QUESTIONS & ANSWERS

September 10, 2002

**California Department of Education
Special Education Division
and the
School Fiscal Services Division**

Note: Responses to the following frequently asked questions relating to special education and charter schools are advisory only. Charter schools and their charter-authorizing agencies, as well as special education local plan area administrators and special education directors, are encouraged to review the actual laws and regulations that provide the basis for these responses and consult with their own legal counsel regarding the application of any of these issues to a specific situation.

SECTION I. CLARIFICATION OF RESPONSIBILITIES

1. How are special education laws applied to charter schools?

Charter schools are public schools, and as such are required to comply with federal and state special education laws. *Education Code* Section 47641 provides that, for the purpose of compliance with federal special education law and for eligibility for federal and state special education funds, a charter school shall be deemed a public school of the local education agency (LEA) that authorized the charter, unless it is itself deemed an LEA. *Education Code* Section 47646 requires that a charter school operating as a school within the district that granted the charter for purposes of special education participate in state and federal funding for special education in the same manner as any other public school of that LEA. Further, a child with disabilities attending the charter school shall receive special education instruction or designated instruction and services, or both, in the same manner as a child with disabilities who attends another public school of that LEA.

2. May a charter school elect not to enroll a student if the student has an individualized education program requiring intensive or other support services?

Both federal and state law prohibit public schools from denying admission to any pupil on the basis of disability or the nature of or extent of a disability, and all special education, civil rights and 504 Rehabilitation Act requirements would apply to a charter school, just like any other public school. If after an eligible student has enrolled in the charter school, the individualized education program (IEP) team concludes that the charter school cannot provide the required services identified in the IEP, the charter-authorizing local education agency (LEA) retains responsibility for ensuring that appropriate services are provided. *How* and *where* such services are provided, and how they are funded, will vary and may be determined by local agreements. Services may be provided via contract with another certified public or non-public agency, but may not be abrogated by the charter-authorizing LEA or the charter school on the basis of cost or lack of available services. (Reference: Title IV 1964 34 Code of Federal Regulations [CFR] Section 100, Title IX 1972 34 CFR Section 106, Section 504 *Vocational Rehabilitation Act* 34 CFR Section 104, *Americans with Disabilities Act* 1990 28 CFR Part 35, *Education Code* Sections 47605[d][1] and 56145)

3. When operating for special education purposes as a local education agency member of a special education local plan area, must the charter school comply with state special education requirements and implement the provisions of the local plan?

Yes. A charter school operating as a local education agency for special education purposes is responsible for providing all special education and related services to students pursuant to their

individualized education program, and is accountable for acting under and implementing the local plan. There has been much discussion about the extent to which a charter school must comply with state special education requirements, where they are perceived to exceed federal requirements of law. However, state requirements have been adopted and submitted to the federal government in their entirety as the state's plan for ensuring all children are provided a free and appropriate public education. For all intents and purposes, there are no differences between state and federal requirements, because all children must be served in the same manner and may not be discriminated against simply because they enroll in a charter school. Therefore, charter schools must comply with federal and state special education laws and regulations. (Reference: 34 CFR Subpart B Section 300.241, *Education Code* Section 47646[a])

4. Who is responsible for ensuring the provision of special education and related services when a charter school has opted to operate as a “school of the district” for special education purposes?

Charter schools do not have clearly defined geographic boundaries of jurisdiction in the same way that traditional school districts do and, with few exceptions, a charter school must accept, subject to capacity limitations, any student who wishes to attend the charter school. Hence, once an eligible student has enrolled in a charter school, for the purposes of special education law it no longer matters where the student resides, except in determining how services will be delivered. The California Department of Education holds the charter-authorizing local education agency (not the district of residence, unless the two are one and the same) responsible for ensuring that appropriate services are provided and that the charter school complies with special education law. (Reference: *Education Code* Section 47641[a])

5. Who is responsible for ensuring the provision of special education and related services to eligible students attending a charter school when the charter school has elected to operate as a local education agency for special education purposes?

Education Code Section 47641 provides that, for the purpose of compliance with federal special education law and for eligibility for federal and state special education funds, a charter school shall be deemed a public school of the local education agency (LEA) that authorized the charter, unless it is deemed an LEA. Charter schools that are deemed an LEA for the purpose of special education must participate in a special education local plan area (SELPA) as an LEA. A charter school operating as an LEA for special education purposes is responsible for providing all special education and related services to students pursuant to their individualized education programs, and is accountable for acting under and implementing the local plan. In cases where a charter application for LEA membership with a SELPA is still pending, the California Department of Education holds the charter-authorizing LEA responsible for ensuring that appropriate services are provided and that the charter school complies with special education law (until the charter school's LEA status has been approved and is in effect).

6. What are a charter school's responsibilities for meeting federal or state requirements for special education transportation (and funding) for the severely and non-severely handicapped?

If transportation or other related services are required by a student's individualized education program (IEP), then the charter-authorizing local education agency (LEA) must ensure that such

services are provided. *How* these services are provided, and *how* they are funded, may be (but are not required to be) negotiated locally between the charter school and the charter-authorizing LEA. There should be no differences in application of law for severely or non-severely handicapped students, other than what is called for in the IEP. (Reference: *Education Code* Section 56145)

7. What responsibility would a charter special education local plan area have with reference to Infant and Child Find programs?

Education Code Section 56205(a) requires that every local plan demonstrate that the special education local plan area (SELPA) has in effect policies, procedures, and programs that are consistent with state laws, regulations, and policies governing, among other things, child find and referral activities, and *Education Code* Section 56301 requires each district, SELPA, or county office to establish written policies and procedures for a continuous child-find system. *Government Code* Section 95022(e) also requires a comprehensive child-find system, to include policies and procedures that ensure that all infants and toddlers who may be eligible for services are identified, located, and evaluated, that services are coordinated between participating agencies, and that infants and toddlers are referred to the appropriate agency.

There are currently no charter SELPAs in California, and developing one raises a number of questions on how to implement a charter SELPA, ranging from issues of size and scope to how to define a service area, and whether a charter SELPA would be required to serve eligible infants and toddlers. If not, questions of equitable funding among SELPAs arise, when some are providing a full continuum of services from birth to age 22 while others are not. How a charter SELPA would address child find and services for infants and toddlers—and how the “service area” would be determined—should be addressed in the proposed charter SELPA’s local plan.

8. Who is responsible (programmatically and fiscally) for special education when a county office of education approves a charter?

The charter-authorizing local education agency (LEA)—in this case the county office of education—is responsible for ensuring that all special education and related services to eligible students are provided pursuant to each student’s individualized education program. *How* these services are provided, and *how* they are funded, may (but are not required to) be negotiated locally between the charter school and the county. For example, the provision of services by a non-public school or agency may be the preferred method of service delivery, and may be the subject of a local agreement.

The charter school is a part of the special education local plan area (SELPA) of which the county office is a member LEA. If the county office belongs to more than one SELPA, then at the time of charter approval, the charter school and the county office should identify under which SELPA the charter school will operate. (Reference: *Education Code* Section 47641[a])

SECTION II. ORGANIZATIONAL RELATIONSHIPS

9. How should services be coordinated when there are multiple sites of a single charter in varying locales?

The number of sites or locales of a charter school is irrelevant to the question of responsibility for provision of services. The California Department of Education holds the charter-authorizing local education agency (LEA) responsible for ensuring the provision of special education and related services to eligible students pursuant to each student's individualized education program, and for ensuring that the charter school (including all satellite locations) complies with special education law. *How* these services are provided, and *how* they are funded, may be (but are not required to be) negotiated locally between the charter school and the charter-authorizing LEA. For example, services may be provided via contract with another district, or a non-public school or agency. In cases where the charter school is operating multiple sites located outside the geographic area of the charter-authorizing LEA, contracts with local districts and/or other service providers may be a particularly useful tool in facilitating the provision of appropriate services in remote locations. (Reference: *Education Code* Section 47646[a])

10. What issues should be addressed in a memorandum of understanding between a charter school and its authorizing district or a charter school acting for purposes of special education as a local education agency and its special education local plan area?

It should be noted that use of a memorandum of understanding (MOU) is recommended, but not required. There are no established criteria recommended for inclusion in an MOU. However, commonly addressed issues include funding and provision of a full continuum of services for students with disabilities, which may include transportation, services to students with low incidence disabilities, and provision of related services (i.e., occupational therapy, physical therapy, speech, etc.). A charter school operating for special education purposes as a local education agency member of a special education local plan area (SELPA) functions as a member district of the SELPA in the same manner as any other member of the SELPA, and as delineated in the local plan (including issues of funding and services). (Reference: *Education Code* Section 47641)

11. May a charter school operating as a “school within a district” for special education purposes enter into its own contracts for delivery of special education and related services?

Yes. However, because the charter-authorizing local education agency (LEA) is responsible for ensuring provision of appropriate special education and related services to eligible students in accordance with each student's individualized education program (IEP), any contracts for provision of services other than by the charter-authorizing LEA should be subject to local agreements between the charter school and the charter-authorizing LEA. Contracts for provision of services may be with any LEA, or with either a non-public school or non-public agency that has been certified by the California Department of Education to provide special education and related services. (Reference: 34 CFR 300.401[b] and [c], *Education Code* Section 47641[a])

12. May a charter school operating as a local education agency for special education purposes contract for special education services?

Yes. *Education Code* Section 56369 authorizes a district, special education local plan area, or county office to contract with another public agency to provide special education or related services to an individual with exceptional needs. Contracts for provision of services may be made with any local education agency, or with either a non-public school or non-public agency that has been certified by the California Department of Education to provide special education and related services.

SECTION III. QUALITY ASSURANCE AND COMPLIANCE ISSUES

13. How are charter schools integrated within the quality assurance process?

The quality assurance process for special education currently consists of five components, which include verification reviews, coordinated compliance self-reviews, complaints monitoring, procedural safeguards, and the local plan. Charter schools are incorporated within the quality assurance process in the same manner as other public schools, in that they are included within the reviews of their charter-authorizing local education agency (LEA). Each charter school is responsible for providing data to its charter-authorizing LEA, and the charter-authorizing LEA is responsible to ensure that this data is reported on a timely basis. If the charter school is operating as an LEA for special education purposes, then the charter school LEA is responsible for providing data to its special education local plan area (SELPA). The SELPA is responsible for data reporting and collection under the California Special Education Management Information System.

14. How might an allegation of noncompliance with special education law on the part of either the charter school or the charter-authorizing local education agency be resolved?

Whenever either a charter school or its charter-authorizing local education agency (LEA) believes there is an issue of noncompliance by the other party, the charter school and the charter-authorizing LEA should attempt to cooperatively resolve the issue, and follow the dispute resolution process delineated in the school's charter if necessary. Other local mechanisms for resolution of disputes include, but are not limited to, informal meetings, dispute resolution, voluntary mediation, and use of a hearing officer. In addition, if the alleged noncompliance on the part of the charter school is not resolved, the charter-authorizing LEA should take appropriate enforcement measures. *Education Code* Section 47607(b) grants a charter-authorizing LEA the authority to revoke a school's charter if the charter school violates any provision of law and has not cured the violation after being given a reasonable opportunity to do so. If there are policies in the local plan that address noncompliance of member districts or schools of member districts, then the SELPA could also implement those procedures.

In addition, any person, organization, or entity may file a complaint with the California Department of Education's Special Education Division when there is an allegation of a violation of state or federal law or regulations relating to students with disabilities. The Special Education Division may invoke sanctions when any entity is found to be in noncompliance, which could include both the charter school and the charter-authorizing LEA.

15. May a local education agency place special education related requirements or conditions on a charter school as a condition of approval or operation of the charter?

As a general rule, a local education agency (LEA) may not place requirements on a charter school beyond what is typically required of other public schools as a condition of approval or operation. However, the charter-authorizing LEA must ensure that special education students will receive the services they are entitled to pursuant to their individualized education programs. These assurances may take many forms, and if circumstances warrant, case-by-case conditions of operation (if not of approval) may at times be appropriate. (Reference: *Education Code* Section 47645)

16. May a local education agency (LEA) require a charter school to operate as an LEA for purposes of special education (rather than as a “school within a district”) as a condition of approval or operation of the charter?

No. An LEA may not require a charter school to become an LEA for special education purposes as a condition of approval or operation. Further, *Education Code* Section 47647 prohibits an LEA reviewing a petition for the establishment or renewal of a charter school from refusing to grant the petition solely because the charter school might enroll pupils who reside in a special education local plan area (SELPA) other than the SELPA that includes the LEA reviewing the charter petition. (Reference: *Education Code* Section 47645)

17. May a local education agency place special education related fiscal requirements on a charter school that are not placed on other schools in the district?

No. A charter school that is deemed to be a public school of the charter-authorizing local education agency (LEA) for purposes of special education shall participate in state and federal funding for special education in the same manner as any other public school of that LEA (*Education Code* Section 47646). Agreements for provision and funding of services may be negotiated locally, but as a general rule, charter schools should not be treated differently than other public schools of the LEA.

SECTION IV. LOCAL PLAN ISSUES

18. May a charter school that wishes to operate as a local education agency (LEA) for special education purposes apply to any special education local plan area (SELPA) for LEA status?

Yes. *Education Code* Section 47641(a) authorizes a charter school to participate in any approved SELPA. Applied practically, however, a charter school will likely of necessity participate in a SELPA located in the geographic area in which the school is located, in order to facilitate delivery of services and participation in the approved local plan.

19. May a charter school operating as a local education agency for special education purposes participate in local decisions made for the special education local plan area?

Yes. A charter school operating as a local education agency (LEA) for special education purposes must be allowed to participate in the governance and in decision making processes for the special education local plan area (SELPA) of which it is a member in the same way as other member LEAs of the SELPA. (Reference: *Education Code* Section 47645)

20. May a multi-district special education local plan area restrict its membership to only those charter schools sponsored by member local education agencies?

No. *Education Code* Section 47641(a) authorizes a charter school to participate in any approved special education local plan area (SELPA), so a SELPA may not adopt any policy that restricts its membership to only those charter schools that have been sponsored by an existing member local education agency of the SELPA.

21. Must a special education local plan area (SELPA) consider an application for membership in the SELPA by a charter school that is geographically removed from the SELPA's area of jurisdiction?

Yes. *Education Code* Section 47641(a) authorizes a charter school to participate in any approved special education local plan area (SELPA), so a SELPA may not refuse to consider an application for membership by a charter school solely on the basis that the charter school is located in an area that is geographically removed from the SELPA's area of jurisdiction. However, a SELPA is responsible for the coordination and implementation of the provisions of the local plan for the geographical area served by the local plan; hence, it would be reasonable for a SELPA to require applicants for membership into the SELPA to demonstrate how students who are geographically removed will be served.

22. How should services be coordinated when a charter school locates in an area that is geographically removed from the charter-authorizing local education agency and the special education local plan area of which they are a part?

The California Department of Education holds the charter-authorizing local education agency (LEA) responsible for ensuring the provision of special education and related services to eligible students pursuant to each student's individualized education program, and for ensuring that the

charter school complies with special education law. *How* these services are provided when the charter school has located in an area that is geographically removed from its authorizing LEA is subject to local negotiation. Some districts are sending special education professionals to the charter school site to provide services on-site on a regular basis, while others may provide transportation to locations where services are provided or place special education professionals at the charter school location on assignment for the duration of the school year or beyond. Other options available to the charter school and its charter-authorizing LEA include contracting with another, closer LEA or with either a non-public school or non-public agency for provision of services. (Reference: *Education Code* Section 47641)

23. What is the process for a charter school becoming a local education agency for special education purposes?

Education Code Section 47641(a) requires only that a charter school provide “verifiable, written assurances” before the charter school can become a local education agency (LEA) for special education purposes. The process will vary from one special education local plan area (SELPA) to another. The governance section of each local plan approved by the state is required to address charter school membership in the SELPA, including a process for review and approval of applications for membership. When considering a charter school’s request for membership in a SELPA, the SELPA may not treat it differently from the manner in which it treats a similar request made by a school district.

Charter schools must be allowed to participate in state and federal funding for special education and the allocation plan developed pursuant to *Education Code* Sections 56195.7(i) and 56836.05 in the same manner as other LEA members of the SELPA. Charter schools must also be allowed to benefit from services provided throughout the SELPA and participate in SELPA governance in the same manner as other non-charter LEA members.

Until the charter school has obtained LEA status, the California Department of Education holds the charter-authorizing LEA ultimately responsible for ensuring that eligible students enrolled in the charter school are provided special education and related services in accordance with law and the student’s individualized education program.

24. What are “verifiable, written assurances” with respect to *Education Code* Section 47641?

Verifiable, written assurances are in effect the charter school’s “plan” for compliance with federal and state special education law and the local plan of the special education local plan area (SELPA) under which the school is applying for local education agency (LEA) member status. The assurances must demonstrate that the charter school, acting in the capacity of an LEA member of the SELPA, can fully implement the requirements of the local plan and meet the needs of all eligible students enrolled in the charter school.

25. What options, if any, are available to a charter school that has been refused membership as a local education agency member of a special education local plan area?

While a special education local plan area (SELPA) may not discriminate against a charter school applicant for local education agency (LEA) membership solely on the basis that it is a charter school, at the same time a SELPA cannot be compelled to accept any charter school or other

district for membership in the SELPA if that charter school or district cannot show how it can successfully implement programs and services within the parameters of the local plan. If the SELPA denies admission to a charter school, the charter school has the option of applying to another SELPA.

The California Department of Education (CDE) encourages charter schools, LEAs, and SELPAs to work cooperatively in the development stages of the written assurances to ensure compliance with federal and state law and the local plan. By doing so, most issues can be resolved locally between the interested parties. However, any person, organization, or entity may file a complaint with the CDE Special Education Division when there is an allegation of a violation of state or federal law or regulations relating to students with disabilities, which would also include alleged discrimination against charter school applicants.

26. What are the local plan requirements with respect to delivery of special education services to eligible students enrolled in a charter school?

Each local plan must include a description of the operation of special education programs within the special education local plan area (SELPA), including the provision of services to students with disabilities in charter schools. A student with disabilities attending a charter school must receive special education instruction or designated instruction and services, or both, in the same manner as a student with disabilities who attends another public school of that local education agency (LEA) member of the SELPA. (Reference: *Education Code* Section 56145)

SECTION V. FUNDING AND FISCAL ISSUES

27. May charter schools participate in risk pooling for excess costs?

Yes. Special education local plan areas (SELPA) are not required to have risk-pooling arrangements; however, when such arrangements are utilized, the practice may not be discriminatory towards charter schools. A charter school operating as a local education agency (LEA) member of a SELPA must be allowed to participate in any local risk-pooling arrangements available to other members of the SELPA.

A charter school operating as a school within the district for special education purposes may not be treated any differently than any other school of the district, so if other schools of the district may participate in local risk-pooling arrangements, then the charter school should also be allowed to participate. The charter-authorizing LEA is statutorily required to ensure that each charter school that is deemed a public school for purposes of special education receives an equitable share of special education funding and services. (Reference: *Education Code* Section 47646)

28. Does current law allow a district to place all financial responsibility for special education services for students enrolled in a charter school on the charter school?

No. Current law governing special education specifies that charter schools operating as a school of the district for special education purposes must be treated fairly, and in the same manner as other public schools. Charter schools may not be required to accept responsibility for special education costs in a manner different from any other public school of that charter-authorizing local education agency. (Reference: *Education Code* Section 47646)

29. How are non-public school placements for eligible students attending a charter school funded?

The allocation plan adopted by each special education local plan area (SELPA) addresses funding of special education and related services, which may include a methodology for funding of non-public school (NPS) costs. The allocation plans will differ in terms of methodology; for example, some SELPA plans have a “shared pool” concept, while others provide an allocation based on the 1997-98 local education agency funding (in place prior to the enactment of Assembly Bill 602, which substantively changed the method of state funding for special education and related services). Regardless of how NPS costs are funded in a particular SELPA, however, neither the SELPA nor the charter-authorizing local education agency may treat a charter school or charter school students differently than other public schools or public school students within the SELPA. (Reference: *Education Code* Section 47646)

30. How are federal special education dollars distributed to charter schools—does the state set aside funds, or is it the responsibility of a local entity?

Federal special education funds are distributed according to the allocation plans adopted by each special education local plan area (SELPA). Federal law requires that each charter school operating as a local education agency (LEA) for special education purposes that opens or significantly

expands its enrollment on or before November 1 of an academic year receive its proportionate share of federal special education funds within five months of the date the charter school LEA opens or significantly expands its enrollment. For each eligible charter school LEA that opens or significantly expands its enrollment after November 1 but before February 1 of an academic year, the charter school LEA is to receive at least a pro rata portion of the amount of funds for which the charter school is eligible, on or before the date funds are allocated for the succeeding academic year. The California Department of Education holds the SELPAs, via the allocation plan process, responsible for ensuring that federal funds are available and allocated to eligible charter school LEAs within the timeframes established by federal law. (Reference: 20 USC 1413[a][5]), 34 CFR Section 76.793)

31. Who has fiscal responsibility for special education students attending charter schools from another special education local plan area?

The California Department of Education holds the charter-authorizing local education agency (LEA) responsible for ensuring the provision of all special education and related services to students enrolled in the charter school pursuant to each student's individualized education program, and for ensuring that the charter school receives an equitable share of special education funding and services. The special education local plan area (SELPA) in which a special education student resides is not financially responsible for the special education or related services required for a student enrolled in a charter school approved by a charter-authorizing LEA belonging to another SELPA (or if the charter school is operating as an LEA member of another SELPA). How these services are provided and how they are funded may be subject to agreements negotiated between the charter school and the charter-authorizing LEA (or the charter LEA and the SELPA). Specifics regarding issues of funding and services for all members of the SELPA are articulated in the local plan. (Reference: *Education Code* Sections 47641[a] and 47646)

32. May a SELPA's existing allocation plan be adjusted to accommodate admission of a new LEA?

Yes. *Education Code* Section 47643 authorizes amendments of allocation plans in accordance with the following: "If the approval of a petition for a charter school requires a change to the allocation plan developed pursuant to subdivision (i) of Section 56195.7 or Section 56836.05, the change shall be adopted pursuant to the policymaking process of the special education local plan area."